

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Division regarding a medical fee dispute between the requestor and the respondent named above. This dispute was received on 4/11/03.

## **I. DISPUTE**

Whether there should be reimbursement for Bowflex machine purchased by the injured worker on 8/12/02.

## **II. RATIONALE**

The basis for denial of payment by the respondent was that a more cost effective substitute for the disputed Bowflex machine had been offered the injured worker in the form of a gym membership. No documentation on the fair and reasonable cost of the gym membership had been presented by the respondent to support this position. "Fair and reasonable" was the only issue raised by the respondent.

Rule 133.307(f), which covers injured worker requirements for filing a dispute states, "The request must be legible, must contain only a single copy of each document, and must include:

- (1) An explanation of the disputed fee issue(s);
- (2) Proof of employee payment for the health care for which the employee is requesting reimbursement (include receipts of payment made); and
- (3) A copy of any EOB relevant to the dispute, or, if no EOB was received, convincing evidence of carrier receipt of employee request for reimbursement.

The requestor met the necessary filing requirements. Both the Bowflex machine and the gym membership have no MAR in the Commission's Medical Fee Guideline; therefore, the carrier's denial is on the basis of the fair and reasonable cost of the Bowflex versus the gym membership. The respondent offered no information to support that the gym membership was more cost effective than the purchase of the disputed Bowflex.

Per Rule 133.307(f), the injured worker is not responsible to support that the cost of the disputed Bowflex is fair and reasonable. The database necessary to make this determination is not available to an injured worker. As the requestor has presented all documentation necessary to file a medical dispute and the respondent has failed to establish the cost of the gym membership as more fair and reasonable, reimbursement of the Bowflex machine is recommended.

### **III. DECISION & ORDER**

Based upon the review of the disputed healthcare services within this request, the Division has determined that the requestor **is** entitled to reimbursement for a Bowflex machine in the amount of **\$1,466.00**. Pursuant to Sections 402.042, 413.016, 413.031, and 413.019 the Division hereby **ORDERS** the Respondent to remit **\$1,466.00** plus all accrued interest due at the time of payment to the Requestor within 20 days receipt of this Order.

The above Findings, Decision and Order are hereby issued this 7<sup>th</sup> day of January 2004.

Noel L. Beavers  
Medical Dispute Resolution Officer  
Medical Review Division

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